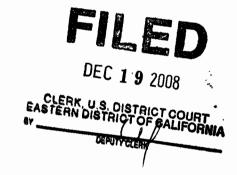
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## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

GARRET GRIFFITH GILILLAND III, and NICOLE MAGPUSAO,

Defendants.

) 2:08-cr-00376-EJG

) APPLICATION FOR ORDER
) REGARDING CRIMINAL FORFEITURE
) OF PROPERTY IN GOVERNMENT
) CUSTODY - 18 U.S.C. §
) 983(a)(3)(B)(ii)(II)

The United States of America, through its counsel, hereby moves for an order allowing the government to maintain custody of property already in the government's possession pending the resolution of a criminal forfeiture matter. The grounds for the motion are as follows:

On or about June 25, 2008, law enforcement officers in Butte County and agents with the Federal Bureau of Investigation executed a Federal search warrant at a residence located at 824 Whispering Winds Lane, Chico, California. The officers seized the following during the execution of the Federal search warrant:

a) Approximately \$28,900 in U.S. Currency.

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Following the execution of the search warrant, it was learned that Gililland fled to Europe. In October 2008, a source in Spain revealed that he was supposed to receive a package for Gililland. On or about October 10, 2008, FBI agents contacted the FedEx Kinko's Office and Print Services located at 5600 J Street, Sacramento, California regarding a package that was being shipped to Gililland through the source in Spain. Pursuant to FedEx' policy, a FedEx employee was allowed to retrieve the package and open it. Inside the package was \$20,000 in cash that was being smuggled to Gililland. The FBI agent seized the following:

b) Approximately \$20,000 in U.S. Currency. Hereinafter, the above-referenced assets are referred to as the "seized assets".

On October 29, 2008, the Grand Jury returned a Superseding Indictment containing forfeiture allegations that include the seized assets. The Superseding Indictment alleges that the seized assets are subject to forfeiture pursuant to 18 U.S.C. § 982(a)(1), 28 U.S.C. § 2461(c) and 31 U.S.C. § 5332(b)(2).

Title 18 U.S.C. § 982(b)(1), Title 28 U.S.C. § 2461(c) and Title 31 U.S.C. § 5332(b)(3) incorporate the forfeiture procedures set forth in 21 U.S.C. § 853. That statute provides several methods for preserving property for the purpose of criminal forfeiture. One such provision authorizes a court upon the filing of an indictment charging an offense for which forfeiture may be ordered and alleging that specific property would, in the event of conviction, be subject to forfeiture to "take any other action to preserve the availability" of such

property. See 21 U.S.C. § 853(e)(1)(A). Such restraining orders may be entered ex parte. And, in entering the order, the Court may rely on the grand jury's return of an indictment specifying that the property shall, upon conviction, be subject to forfeiture to the United States. See, e.g., United States v. Jamieson, 427 F.3d 394, 405-06 (6th Cir. 2005) (initial issuance of restraining order under Section 853(e)(1)(A) may be ex parte and based on grand jury's finding of probable cause).

The government contends here that the "take any other action to preserve the availability" of property provision of Section 853(e)(1)(A) applies in circumstances where, as here, the government has already obtained lawful custody of the assets pursuant to a Federal search warrant, and the policies in place at FedEx Kinko, and the government seeks to continue to maintain custody of such assets pending further criminal forfeiture proceedings. Accordingly, pursuant to Section 853(e)(1)(A) of Title 21, the United States respectfully moves this court to issue an ex parte order based on the grand jury's finding of probable cause that directs the United States may maintain custody of the seized assets through the conclusion of the pending criminal case.

DATED: 12/14/2008

McGREGOR W. SCOTT United States Attorney

24 /s/ Russell L. Carlberg
RUSSELL L. CARLBERG
Assistant U.S. Attorney

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ORDER

This matter comes before the Court on the motion of the United States for an Order authorizing the government and its agencies to maintain custody of certain property pending the conclusion of the pending criminal case. For the reasons provided in the government's motion, the Court makes the following orders:

IT IS HEREBY ORDERED, that the United States and its agencies, including the Federal Bureau of Investigation, are authorized to maintain and preserve the following assets until the conclusion of the instant criminal case, or pending further Order of this Court:

- a) Approximately \$28,900 in U.S. Currency; and
- b) Approximately \$20,000 in U.S. Currency.

IT IS SO ORDERED.

DATED: /2/19/0-8

EDWARD J. GARCIA

UNITED STATES DISTRICT JUDGE